

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 957 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
RADHABEN KRISHNADAS PATHAK

Versus

MUGATLAL CHHOTALAL OZA

-----  
Appearance:

MR GIRISH VYAS FOR MR AK TRIVEDI for Petitioners

MR MB GANDHI for Respondent No. 1

-----  
CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 30/08/96

ORAL JUDGEMENT

The petitioners have questioned the order passed below Ex.31 in Civil Appeal No.170/84 by the Appellate Bench of Small Causes Court, Ahmedabad on 1.4.96 whereby the application for production of additional evidence during the pendency of the appeal came to be rejected, by invoking the aids of the provisions of section 115 of the Code of Civil Procedure, 1908 (Code).

The petitioners are the original plaintiffs landlord and the respondent is the original defendant tenant. They are hereinafter referred to the landlords and tenant for the sake of convenience and brevity. The landlords instituted H.R.P. Suit No.3582/80 in the court of Small Causes, Ahmedabad against the tenant on following grounds under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act):

- (1) arrears of rent;
- (2) reasonable and bonafide personal requirement; and
- (3) acquisition of suitable residential accommodation;

The Trial Court accepted the fact of tenant having acquired accommodation, but did not consider it to be suitable. Therefore, the suit came to be dismissed on that ground along with other grounds. The landlords, therefore, preferred aforesaid appeal which is pending. During the pendency of the appeal, the demise premises came to be transferred by the original plaintiff to petitioners Nos.2 & 3. The petitioners original appellants in the pending appeal submitted an application Ex.31 on 12.12.95 contending that the tenant has acquired suitable residential accommodation and therefore it was necessary to lead additional evidence during the pendency of the appeal. The Appellate Bench rejected the said application submitted under Order 41 Rule 27 of the Code.

Order 41 Rule 27 of the Code empowers the Court to permit production of additional evidence in the Appellate Court on the grounds stated therein. The provisions of Order 41 Rule 27 of the Code read as under:

- "27. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if --
- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
  - (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at

the time when the decree appealed against was passed, or

- (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

the Appellate Court may allow such evidence or document to be produced or witness to be examined.

- (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

It could very well be seen from the aforesaid provisions that ordinarily the parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary during the course of appeal except on the grounds and circumstances enumerated in clause (a), (aa) and clause (b). If the Appellate Court reaches to the conclusion that additional evidence is required to be permitted on any one of the three grounds, it can allow such evidence or documents to be produced or even for that purpose witness to be examined. There is purpose and policy behind the provisions of Order 41 Rule 27 of the Code.

The Lower Appellate Court rejected the application Ex.31 mainly on the ground that the additional evidence sought to be produced during the pendency of appeal in connection with the right to claim possession of the demise premises under section 13(1)(1) of the Bombay Rent Act has already been made one of the grounds in another suit No.2359 of 1992. Secondly, the appellate Court rejected the application Ex.31 on the ground that the newly purchaser after being impleaded as appellants had given three applications in appeal, Ex.14, 16 and 18. Ex.14 was an application for additional evidence in respect of the alleged newly acquired premises by the tenant. Application Ex.16 was for production of documents by a witness summons and application Ex.18 was an application to appoint Commissioner to make panchnama of the demise premises. These three applications, admittedly, have been rejected by the Appellate Bench mainly on the ground that the new purchasers, namely, the petitioners Nos.2 & 3, have already instituted another suit No.2359 of 1992 in the Trial Court alleging the same fact about the suitable acquisition of residence by the tenant. Therefore, the Appellate Bench observed that

application Ex.32 is nothing but one more attempt made by the landlord to lead further additional evidence in the matter and in respect of alleged acquired premises. Thirdly, the Appellate Bench has also observed that the new purchasers should not be allowed to collect the evidence for the suit in the appeal.

It has been contended that since aforesaid three applications Ex.14, 16 and 18 are rejected, the subsequent application Ex.31 on the same ground cannot be allowed to be raised. The Appellate Bench has not decided the application Ex.14, 16 & 18 on merits. Admittedly, the main ground for rejection of the said application was that the new purchasers along with original plaintiffs have already filed another suit No.2359 of 1992 alleging same facts about acquisition of suitable residence by the tenant. Since the aforesaid three applications are mainly decided and rejected on the ground of pendency of another suit wherein the factum of acquisition of suitable residence is made a ground for eviction, the subsequent application Ex.31 cannot be said to be not maintainable. If the landlords are ready to withdraw the subsequent suit which came to be filed in 1992, then it cannot be contended that mere filing of said suit would constitute a legal hurdle in maintaining an application for additional evidence under Order 41 Rule 27 of the Code in a pending appeal which is of 1984. The very fact that the subsequent suit is filed on the alleged ground of acquisition of another suitable residential accommodation by the new purchasers in 1992, prima facie, would strengthen the case for additional evidence during the pendency of appeal under Order 41 Rule 27 by way of subsequent events. It is the case of the landlords that the tenant has acquired suitable residential accommodation even during the pendency of appeal. Therefore, after filing the suit on the said one of the grounds in 1992, an application for additional evidence came to be filed on 28th March, 1995 in an appeal of 1984. If the subsequent suit based on the same ground is withdrawn and if the additional ground of acquisition of alleged suitable residential accommodation is permitted to be raised during the pendency of appeal, it will have positive effect on both, to save time and money. The Court is obliged to consider the subsequent events so as to do substantial justice. Substantial justice cannot be sacrificed on the altar of procedural law.

The Apex Court in the case of M/s. Variety Emporium v. V.R.M. Mohd. Ibrahim, AIR 1985 SC 207 has clearly laid down that in an eviction suit by the landlord against the

tenant, the subsequent events shall be taken into consideration. In that case, in a suit for eviction on the ground of bonafide requirement of premises by the landlord, the subsequent events had to be taken into account for the purpose of finding out as to whether the landlord still required the premises in possession of the tenant. Placing reliance on the decision of the Supreme Court in the case of Hasmat Rai v. Raghunath Prasad, AIR 1981 SC 1711, it was further held that in appropriate cases, the Court must have regard to events as they present themselves at the time when it is hearing the proceedings before it and should mould the relief in the light of those events. It was the case of the landlords that the tenant has acquired suitable alternative accommodation and on that basis suit came to be filed. The Trial Court found that the accommodation obtained by the tenant is not suitable. Therefore, the landlords filed appeal and during the pendency of the appeal, the landlords contended that the tenant has acquired two other suitable residential accommodations. Thus, additional ground was sought to be raised during the pendency of appeal in the light of the subsequent events that happened after the passing of the decree by the Trial Court. Subsequent events either entitling or disentitling the party to a relief ought to be taken into consideration in appropriate cases more so in a case under the rent legislation where the litigative journey is long. It was the case of the landlords that the provisions of section 13(1)(1) providing for eviction decree on the ground of acquisition of suitable residential accommodation was raised in the Trial Court. Thereafter, during the pendency of the appeal, it was the case of the landlords that the tenant acquired two other suitable residential accommodation and, therefore, additional ground for a decree under section 13(1)(1) came to be pleaded. No doubt, the original plaintiff landlord sold the properties during the pendency of appeal to petitioners Nos.2 & 3 who are the new purchasers and they have also initiated a suit for possession on the same ground. However, that was a right of the landlord to file a separate suit. At the same time, if the landlord wants to add additional grounds in a pending appeal which is 12 years old because of subsequent events, they cannot be denied the right to resort to the provisions of Order 41 Rule 27 of the Code merely on the ground that a suit is pending when the plaintiffs are ready to withdraw the said suit. It is stated at the Bar that the new purchasers, petitioners Nos.2 & 3, shall withdraw the suit No.2359/92 pending in the Small Causes Court on the ground of acquisition of suitable alternative accommodation. The said suit is

pending on three grounds. One of the ground is acquisition of suitable residential accommodation by the tenant. It is stated at the Bar that the suit will be withdrawn on that ground if application Ex.31 is allowed.

Contention was raised that the cause of action for filing the suit for eviction accrued to the original plaintiff landlords and the transfer of the demise premises during the pendency of the appeal would change the cause of action. This submission is also not acceptable in view of the clear provisions of Order 22 Rule 10 which provides the procedure in case of assignment, creation or devolution of of any interest during the pendency of a suit and the Court can permit the party to continue the suit. The petitioners Nos.2 & 3, the newly purchasers of the demise premises have stepped into the shoes of the original plaintiff landlord. It, therefore, cannot be contended that the newly purchasers or the newly impleaded landlords cannot be permitted to raise additional ground for eviction in the ongoing suit. Therefore, the submission raised on behalf of the tenant must be rejected.

The main anxiety of the Court should be to see that the matter are decided expeditiously and justice is done early. No doubt, the petitioners have filed Civil SuitNo.2359/92 for eviction also on the ground of acquisition of suitable residence. That by itself would not be an impediment in deciding the merits of the application under Order 41 Rule 27 if the suit is sought to be withdrawn on that ground. It is a suit of 1992 whereas in the appeal which is of 1984, if the subsequent events are considered and if the additional ground is allowed to be pleaded, obviously, justice would be rendered promptly and with less loss of time and money. Therefore, the Appellate Bench of the Small Causes Court, should not have rejected the application Ex.31 under Order 41 Rule 27 merely on the ground that another suit is filed and is pending wherein same ground is raised. The Court could have said that if the merits so justified that an application for additional evidence under Order 41 Rule 27 is granted provided another suit is withdrawn.

In a suit for possession under the Bombay Rent Act between the landlord and tenant, the happening of subsequent events after filing of the suit or passing of decree can be added as an additional ground. It is the case of the landlords that the tenant has acquired two suitable residential accommodations during the pendency of appeal. Therefore, subsequent events like this could be considered and could be permitted to be raised as an

additional ground if the Court is satisfied by invoking the power of Order 41 Rule 27 of the Code. It appears that mainly the Appellate Bench was influenced by the fact that another suit was filed in which one of the grounds was acquisition of suitable residential accommodation and therefore, application under Order 41 Rule 27 should be rejected. In fact, earlier three applications Ex.14, 16, and 18 submitted during the pendency of the appeal came to be rejected mainly on that ground. With due respect, the approach of the Appellate Bench in rejecting the application Ex.31 is not sustainable. The Court could also pass an order if the circumstances so justified that application under Order 41 Rule 27 is granted subject to withdrawal of the another suit. The view which this Court is taking is also reinforced by the ratio laid down by this Court in the case of Champaben v. Gopinath, 21 GLR 709 (Coram: S.B.Majmudar, J. as he then was). In that case also , in almost similar circumstances, subsequent events after filing of the suit were permitted to be added as grounds for eviction and the suit pending on the same ground was undertaken to be withdrawn. In the present case, learned advocate Mr. Vyas for the petitioners original plaintiffs has declared that Suit No.2359/92 pending in the Small Causes Court shall be withdrawn on the ground of acquisition of suitable residential accommodation if the application Ex.31 is allowed.

Having regard to the facts and circumstances narrated hereinbefore and considering the relevant proposition of law, this Court has no hesitation in finding that the impugned order of the Appellate Bench of the Small Causes Court, Ahmedabad in rejecting the application Ex.31 in a pending Civil Appeal No.170/84 is unjust and improper. Therefore, the said order is quashed and set aside. In the opinion of this Court, the application Ex.31 submitted during the pendency of the appeal submitted by the appellants therein who are the petitioners herein is required to be allowed and the parties are required to be afforded an opportunity of leading evidence on this ground. Accordingly the said application is allowed. The petitioners are, therefore, permitted to lead additional evidence in respect of the alleged ground of acquisition of suitable residential premises under section 13(1)(1) of the Bombay Rent Act. The matter is remitted back to the Appellate Bench for further proceedings for production of additional evidence pending the appeal. Learned advocate Mr Vyas appearing for the petitioners undertakes, under instructions from the parties who are present in the Court, to withdraw suit No.2359/92 on that ground on or before 9th

September,1996.

In the result, this revision application is accordingly allowed while quashing the impugned order and allowing the application Ex.31 in Civil Appeal No.170/84. Rule is made absolute to this extent with no order as to costs in the circumstances of the case.

.....